

September 1, 2015

**VIA ECF**

Hon. Steven C. Mannion  
United States Magistrate Judge for the District of New Jersey  
Martin Luther King Building & U.S. Courthouse  
50 Walnut Street, Court Room MLK 5C  
Newark, New Jersey 07101

**Re: *Trzaska v. L'Oreal USA, Inc., et al.*, Civil Action No. 15-2713 (SDW) (SCM)**

Dear Magistrate Judge Mannion:

We represent L'Oreal, S.A., defendant in the above matter. We write, as per the suggestion of Your Honor's Chambers from my phone call of August 28, 2015, to request clarification of Your Honor's Order of August 25, 2015 (Dkt. No. 34) and its impact on our pending motion to dismiss the Complaint and First Amended Complaint (Dkt. No. 30).

Our motion, filed on August 14, 2015 seeks dismissal of two pleadings which are directed against L'Oreal, S.A. on the records of the Court. The first is the Complaint (Dkt. No. 1) which we contend was served in violation of the Hague Convention and is therefore subject to dismissal under FRCP 12(b)(5). The second is the Amended Complaint (Dkt. No. 10) which we assert was not served on L'Oreal, S.A. As part of our motion, we have also requested a stay of time in which to move to dismiss for lack of personal jurisdiction pending proper service or the Court's disposition of our motion. Plaintiff did not oppose this aspect of the motion in the opposition papers that he filed on August 27, two days after the deadline for service.

It is our understanding that this motion was assigned to Your Honor. In light of plaintiff's untimely submission of answering papers, and as discussed in our letter of August 31, 2015 (Dkt. No. 35) the new return date is September 22, 2015 and we will be filing our reply papers on or before September 15, 2015.

We respectfully submit that notwithstanding the recitals contained in the August 25, 2015 Order, neither L'Oreal, S.A. nor plaintiff believes that our motion to dismiss the Complaint and the Amended Complaint is moot. In our view, the Complaint and the Amended Complaint are still pending against L'Oreal, S.A., the propriety of the service of the Summons and Complaint is strongly disputed, and if the pleadings are allowed to stand despite what we contend was improper service, the Amended Complaint will require a response. As set forth in our moving papers, we contend that the purported service of process on L'Oreal, S.A. is void, that L'Oreal, S.A. is not properly before the Court, and need not respond to the Complaint until and unless

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proper service is made, a matter that can be decided only by the Court. For his part, plaintiff filed opposition papers on August 27, 2015, two days after the entry of the August 25 Order, signifying that he also believes that the motion requires a determination on its merits and is not moot.

Since the motion addresses a pending controversy in the matter, we respectfully request that the August 25, 2015 Order be clarified to reflect that the motion of L'Oreal, S.A. remains pending on the Court's docket is not moot and has not been terminated. In that regard, and as per FRCP 12(a)(4), we will not be filing a responsive pleading until the motion is decided.

We remain available at the Court's convenience for any questions or conferences that Your Honor may deem necessary.

Respectfully yours,

A handwritten signature in blue ink, appearing to read "E A Savage", with a stylized flourish at the end.

Eric A. Savage

cc: Hon. Susan D. Wigenton, U.S.D.J.  
Gerard J. Jackson, Esq.  
Christopher B. Carton, Esq.